IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1976

No. 76-930

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; DAVID S. McEACHRAN, Whatcom County Prosecuting Attorney; CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney; COALITION AGAINST OIL POLLUTION; NATIONAL WILDLIFE FEDERATION; SIERRA CLUB; and ENVIRONMENTAL DEFENSE FUND, INC.,

Appellants,

v.

ATLANTIC RICHFIELD COMPANY, and SEATRAIN LINES, INC.,

Appellees.

JURISDICTIONAL STATEMENT

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IN THE

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No._____

DANIEL J. EVANS, Governor of the State of Washington, *et al.*,

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v.

ATLANTIC RICHFIELD COMPANY, *et al.*,

Appellees.

On Appeal From The United States District Court For The Western District Of Washington

JURISDICTIONAL STATEMENT

Appellants, Daniel J. Evans, Governor of the State of Washington, *et al.*, appeal to this Court from an order of the United States District Court for the Western District of Washington, sitting as a statutory three-judge court, enjoining enforcement of Chapter 125 of the Laws of the State of Washington, 1975, First Extraordinary Session, codified at R.C.W. §§ 88.16.170 *et seq.* ("Chapter 125"). The order appealed from was issued in execution of a judgment of the District Court declaring Chapter 125 void and of no force and effect. Pursuant to Rule 15

of the Rules of the Supreme Court, Appellants submit this Jurisdictional Statement to show that this Court has jurisdiction of the appeal, that substantial federal questions are presented herein, and that Appellants are entitled to plenary review of the judgment below.

OPINIONS BELOW

The orders appealed from, and the District Court's opinion on the merits of the case, have not yet been reported. The District Court's orders are set forth in the Appendix at Appendix A and Appendix B, respectively.[1] The opinion of the District Court on the merits of the case, together with the judgment, are set forth in App. C and App. D, respectively.

JURISDICTION

This is a direct appeal pursuant to 28 U.S.C. § 1253 from an order granting, after notice and hearing, a permanent injunction in a civil action required by 28 U.S.C. §§ 2281, 2284, to be heard and determined by a three-judge District Court.[2] The Complaint in this action sought to have Chapter 125 declared unconstitutional and void and to have its enforcement enjoined. The District Court's judgment invalidating the statute was entered on September 24, 1976. The District Court's order enjoin-

[1]Citations to the Appendix are in the form "App.....".

[2]Subsequent to the filing of the Complaint in this action, the Three-Judge Court Act was substantially modified by Pub. L. No. 94-381 (August 12, 1976). However, by its own terms, that modification is not retroactive, and thus does not affect cases such as the present one.

ing its enforcement was issued November 12, 1976. Appellants filed Notices of Appeal to this Court on November 19, 1976 (App. E).[3] Because the District Court, acting as a statutory three-judge court, invalidated the statute and enjoined its enforcement, this Court has jurisdiction on direct appeal under 28 U.S.C. § 1253. See, *e.g.*, *Moe v. Confederated Salish & Kootenai Tribes, Etc.*, 421 U.S. 707 (1976); *Philbrook v. Glodgett*, 421 U.S. ....., 95 S. Ct. 1893 (1975); *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973); see also *Carleson v. Remillard*, 406 U.S. 598 (1972); *Brotherhood of Locomotive Engineers v. Chicago, R.I. & P.R. Co.*, 382 U.S. 423 (1966); *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The primary constitutional and statutory provisions involved in this case are the Supremacy and Commerce Clauses of the United States Constitution (Article VI, Clause 2; Art. I, Section 8, Clause 3); Chapter 125; and the Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, 86 Stat. 424, 33 U.S.C. §§ 1221 *et seq.*, 46 U.S.C. § 391a (the "PWSA"). They are set forth in the Appendix at

[3]Appellants have also filed notices of appeal, as a precautionary measure, to the Court of Appeals for the Ninth Circuit. See App. F. The District Court, by order of December 1, 1976, at the motion of the State defendants, Daniel J. Evans et al., suspended all processing of these appeals pending completion of the appeal to which this jurisdictional statement relates. See App. M and App. N, respectively.

App. H, App. I, and App. J, respectively.

Other provisions of the United States Constitution involved are the Treaty Making Clause (Article II, Section 2, Clause 2) and Amendment XI to the United States Constitution. They are set forth at App. K. and App. L., respectively.

QUESTIONS PRESENTED

In 1975 the State of Washington enacted legislation, Chapter 125, designed to protect certain highly valued navigable waters and adjacent shorelines of the State from damage by oil carried by large oil tankers. The appeal presents the following questions:

1. Whether the historic police powers of a state to protect its citizens and navigable water resources from oil pollution, by ensuring safe methods of oil transportation by tankers, have been wholly ousted by the Ports and Waterways Safety Act of 1972 — a federal statute which does not express an explicit intent to do so and which creates a scheme compatible with continuing state regulation?
2. Whether the historic state police powers as exercised in Chapter 125 impermissibly conflict with:
   a. The Commerce Clause, or
   b. The Treaty Making Clause?

A further question is:

Whether in light of the Eleventh Amendment the district court had jurisdictions over the State

of Washington defendants Governor Daniel J. Evans, et al?

STATEMENT OF THE CASE

A. The Statutory Scheme

This case involves a challenge to the constitutional validity of Chapter 125 brought by Atlantic Richfield Company ("ARCO"),[4] which owns and operates an oil refinery and related facilities at Cherry Point, Washington, adjoining northern Puget Sound.[5] Chapter 125 is an act designed "* * * to decrease the likelihood of oil spills on Puget Sound and its shorelines", through regulation of certain aspects of oil tanker operation within the Sound.

Puget Sound,[6] a large arm of the Pacific Ocean which flows—on tidal cyclic basis—deep into Western Washington, is a resource of priceless value to the people of the State of Washington. It functions as the center for numerous commercial, recreational, educational, and scientific activities, all of which depend

[4]Seatrain Lines, Inc., a shipbuilding and ship-operating company, subsequently intervened in the suit as a plaintiff.

[5]ARCO's challenge relies in large measure upon the Ports and Waterways Safety Act of 1972. That act authorizes the Coast Guard to establish vessel traffic systems in selected ports and waterways (Title I) and to improve minimum standards for the design, construction and operation of oil tankers (Title II).

[6]"Puget Sound," as described for purposes of Chapter 125, is that area including the marine waters within the State of Washington lying east of a line drawn from Discovery Island Light (on the southern tip of Vancouver Island, British Columbia) to the New Dungeness Light (approximately halfway between Port Townsend and Port Angeles, Washington). More than 60% of the residents of the State reside in the twelve counties which border Puget Sound.

to a greater or lesser extent, on a pollution-free Puget Sound.

Chapter 125 was enacted to ensure the safe transport of oil to the several refineries operating adjacent to Puget Sound. To reach the four larger refineries within the Puget Sound area, tankers must pass from the Pacific Ocean through the Straits of Juan de Fuca, then up narrow and hazardous channels skirting the San Juan Islands, an area renowned for its beauty as well as for its scientific and recreational importance. Protection of these resources from the dangers of oil spills has assumed increased importance because the opening of the Trans-Alaska Pipeline will result in substantially increased tanker traffic in Puget Sound.[7]

Chapter 125 is intended to accomplish its goal of protecting Puget Sound from pollution by oil by essentially three means. First, based upon a legislative determination that the risk from a massive oil spill from "supertankers" (any oil tanker larger than 125,000 deadweight tons ["DWT"]) in the confined waters of Puget Sound is unacceptable, Chapter 125 prohibits their entry into the Sound (Section 3[1]). Second, oil tankers larger than 40,000 DWT but smaller than 125,000 DWT are permitted to

[7]Approximately 15% of the Alaskan crude oil is intended for Puget Sound. In 1974, imports by tanker to Puget Sound averaged 129,000 barrels per day. In 1977, the opening year of the Trans-Alaska Pipeline, 122,000 barrels per day of North Slope oil are scheduled for delivery to Puget Sound refineries; by 1978, that amount will increase to 213,000 barrels per day; and by 1981, it will reach more than 336,000 barrels per day. These, of course, are estimates, and may be low.

enter the Sound if they are either accompanied by a tug escort or possess certain prescribed safety features (Section 3[2]).[8] Third, all oil tankers above 50,000 DWT are required to have state licensed pilots on board when navigating the Sound (Section 2). (Chapter 125 does not apply to tankers smaller than 40,000 DWT). At the time Chapter 125 was passed, and continuing to this date, there have been no federal regulations in effect establishing for Puget Sound the kind of operational safety precautions reflected in Chapter 125, e.g., general access limits and tug escort requirements. The design features specified as an alternative to tug escorts in Chapter 125 are fully compatible with all federal design and construction standards.

The scheme of protection against oil spill risks contemplated by Chapter 125 is an integral part of the overall effort of the State of Washington to preserve and enhance the environmental quality of Puget Sound. Over the past ten years, the State has enacted extensive legislation to protect the Sound,[9] and the federal, state and local governments have expended

[8]The prescribed safety features are minimum shaft horsepower of at least one horsepower for each 2.5 DWT; twin screws; double bottoms underneath all oil and liquid cargo spaces; two radars, one of which must be collision avoidance radar; and such other navigational systems as may be prescribed by the Board of Pilotage Commissioners.

[9]This legislation includes the Shoreline Management Act of 1971, Chapter 90.58 RCW; Water Resources Act of 1971, Chapter 90.54 RCW; State Water Pollution Control Act, Chapter 90.48 RCW; and Coastal Waters Protection Act of 1971, RCW §§ 90.48.370 *et seq.*

hundreds of millions of dollars to enhance the Sound's water quality. Further, for several years, the State has actively pursued a policy aimed at limiting tanker traffic in the Sound, particularly by encouraging development of a single oil transfer terminal for supertankers in the state but outside Puget Sound. The State's Coastal Zone Management Program, approved by the Secretary of Commerce on June 1, 1976, pursuant to the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 *et seq.*, makes the concept of a single oil transfer terminal, located outside Puget Sound and capable of supplying all existing refineries, a central element of the State's oil transportation policy.

B. **Proceedings Below**

Chapter 125 became effective on September 8, 1975. The same day, ARCO filed a Complaint in the United States District Court for the Western District of Washington seeking a judgment to declare the statute unconstitutional and void and to enjoin its enforcement. Named as defendants were the Appellants here, the state officials responsible for enforcement of Chapter 125, including Daniel J. Evans, Governor of the State of Washington, Slade Gorton, Attorney General of the State of Washington, the five members of the Board of Pilotage Commissioners of Washington and David S. McEachran, Prosecuting Attorney of Whatcom County, the county in

which the ARCO refinery is located.[10] ARCO's primary claims were that Chapter 125 was invalid under the Supremacy Clause of the United States Constitution (Article VI, Clause 2), because it had been preempted by federal law, particularly the PWSA, and that Chapter 125 imposed an undue burden on interstate commerce, in violation of the Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3).[11] Because the action sought injunctive relief against enforcement of a state statute on the grounds of unconstitutionality, a three-judge court was convened pursuant to 28 U.S.C. §§ 2281, 2284, to determine the case. Although ARCO in its Complaint requested a temporary injunction, it did not pursue that request and no preliminary relief was issued by the District Court. ARCO continued to comply with Chapter 125 during the pendency of the litigation in the District Court.

The District Court heard the case on June 25, 1976, upon an agreed statement of facts.[12] On September 23, 1976, the District Court rendered its decision. In a six-page opinion, it held that Chapter 125 was preempted in its entirety by federal law, in

[10]Subsequent to filing of the Complaint, the King County Prosecutor (Christopher T. Bayley), and four organizations concerned with preservation of Puget Sound (the Coalition Against Oil Pollution, the National Wildlife Federation, the Sierra Club and the Environmental Defense Fund), also Appellants here, intervened in the suit as defendants.

[11]ARCO also claimed Chapter 125 was invalid based upon federal foreign affairs and treaty-making powers.

[12]The agreed statement of facts was embodied in a Pre-Trial Order, dated April 6, 1976; it is hereinafter cited by paragraph or exhibit references in parentheses.

particular the PWSA. A judgment declaring the ~~federal~~ statute invalid was entered on September 24, 1976.

On November 12, 1976, upon the motion of ARCO, the District Court issued a further order permanently enjoining the Appellants from enforcing or attempting to enforce Chapter 125. The Appellants requested a stay of that order pending completion of an appeal. The District Court stayed the effectiveness of the injunction until December 15, 1976. The Appellants, by application filed with this Court on December 6, 1976, sought a further stay of the mandate of the District Court. On December 9, 1976, Mr. Justice Rehnquist referred the application for a stay to the full Court at the conference following December 10, 1976, and continued the stay of the District Court's mandate pending further order. To date, the full Court has not yet ruled upon the application for a stay.

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

The questions presented to this Court by this appeal are both substantial and important. The District Court held that this statute preempted the entire field of oil tanker regulation. The sweeping preemption holding of the District Court radically upsets an area of traditional state competence, ousting coastal states from their historically recognized police powers over coastal and harbor uses to prevent pol-

lution.[13] The District Court's holding can be justified neither by the language and history of the PWSA nor by the nature of the regulatory scheme it establishes. Finally, the District Court's holding runs counter to the overall federal policy of encouraging state action to protect valuable state marine and coastal resources.

I. Regulation of Port and Waterway Safety is a Fundamental Attribute of the State's Police Powers

The authority to protect the environment and the health and safety of the public by regulating the safety of state navigable waters has long been recognized to be a fundamental attribute of the states' police powers. This Court, more than a century ago, in *Cooley v. Board of Wardens*, 53 U.S. 298 (1851), emphasized that the different needs and peculiar, unique features of different port areas demand particularized local regulation. An unbroken line of cases since, from *Packet Co. v. Catlettsburg*, 105 U.S. 559 (1881) (landing regulations), to *Morgan's L. & T.R. & S.S. Co. v. Board of Health*, 118 U.S. 455 (1886) (quarantine regulations), to *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960) (smoke abatement ordinance), to, most recently, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973) (oil spill liability scheme), reflects the same understanding. In *Askew*, the Court rejected preemption claims in the field of oil spill liability, term-

[13] Significantly, six concerned States filed *amicus curiae* briefs in the District Court supporting the State of Washington's position.

ing oil spills "an insidious form of pollution of vast concern to every coastal city or port and to all the estuaries on which the life of the ocean and the lives of the coastal people are greatly dependent." 411 U.S. at 328.

The District Court's holding in this case, ignoring the strong presumption in favor of upholding state exercise of police power, strips the states of all authority to regulate vessel source pollution.[14]

II. The Ports and Waterways Safety Act Does Not Express a Clear and Manifest Purpose to Preempt State Regulation

In order to preempt the "historic police power of the states" to protect the environment and the health and safety of their citizens, Congress must express a "clear and manifest purpose" to do so. See, *e.g.*, *DeCanas v. Bica*, 424 U.S. 351, 357 (1976); *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146-147 (1963); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Since preemption involves "the sensitive interrelationship between statutes adopted by the separate, yet coordinate, federal and state sovereignties * * * the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding

[14]Statutes of various states provide for equipment or operation requirements and also for exclusion of vessels from particular state waters. See, *e.g.*, Connecticut General Statutes Ann. §25-54 cc; New Hampshire Revised Statutes Ann. Vol. 2, §145-a:11; Maine Revised Statutes Ann §560(3). The State of Alaska has also recently enacted legislation designed to reduce the risks to Alaska associated with the marine transport leg of the Trans-Alaska Pipeline, Chapter 266, Laws of Alaska 1976, Chapter 20 §§30.20.010 *et seq.*, Alaska Statutes.

one completely ousted.' " *Merrill, Lynch, Pierce, Fenner and Smith, Inc. v. Ware*, 414 U.S. 117, 127 (1973), quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963).

The District Court, making no effort to reconcile the state and federal enactments, relied on no express language in either the PWSA or its legislative history which would demonstrate a congressional intent to preempt. Significantly, Senator Warren Magnuson, the Senate sponsor of the PWSA, has disagreed with the District Court's analysis; he has stated:

> "As the sponsor of that Act [the PWSA] in the Senate, I have made known my disagreement with the decision. I think it is wrong; I feel the Court has simply misread the intent of Congress as contained in the Ports and Waterways Safety Act. The weakness of the decision is highlighted by the complete absence of any analysis of the terms of the Act. The Court's reasoning was simplistic at best. Preemption is not favored in the law. Congress must show a clear intent to preempt before such a finding is made. This court summarily reached its decision on the thinnest of reasoning. I say they are wrong." 121 *Cong. Rec.* S.17575 (daily ed., October 1, 1976).

No clear and manifest intent to occupy the entire field of oil tanker regulation can be found in the PWSA.[15] Contrary to the District Court's character-

[15]While the United States, as amicus curiae, took the position in the District Court that "Congress by the passage of the Ports and Waterways Safety Act plainly intended to preempt the field of oil tanker regulation," Brief of the United States, May 24, 1976, at 7, its ten-page submission to the District Court was little more than a conclusory defense of federal jurisdiction. It brought to light no new language

zation, Title I of the PWSA does not deal with the entire field of tanker regulation, but is primarily directed toward authorizing the Coast Guard to establish and operate vessel traffic control systems in such ports and waterways as it deems appropriate. While Title I does contain some language of arguably preemptive effect, other language therein contemplates continuing state regulation,[16] and the formulation of the relationship between federal and state regulation in the statute, couched in terms of a positive preservation of state power, is so ambiguous and obscure as to be insufficient to demonstrate the requisite congressional intent. For its part Title II of the PWSA, which is primarily directed at authorizing the Coast Guard to develop "minimum" design and construction standards for oil tankers, contains no reference at all to state power to take action in the same area.

III. The Federal Scheme Under the Ports and Waterways Safety Act is Compatible with Continuing State Regulation

Choosing not to rely on statutory language or legislative history, the District Court rested its preemption holding on the determination that the PWSA established a "comprehensive federal scheme" for regulating oil tankers, a scheme which contemplated "national uniformity" and which did not "invite"

or legislative history, nor did it demonstrate in any factual way how Chapter 125 would interfere with federal regulation under the PWSA.

[16]See e.g. 33 U.S.C. § 1222 (b) and (c).

state sharing of regulatory authority (App. 7a-9a). Comprehensiveness alone, however, cannot be equated with an intent to preempt.[17] Comprehensive federal statutory schemes may leave the states with broad powers to achieve complementary goals under state legislation. See, *e.g.*, *DeCanas v. Bica*, 424 U.S. 351 (1976); *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973). The question in any one case is whether, in the absence of clear congressional intent, the congressional scheme leaves room for state action.

The PWSA is not so comprehensive, in intent or implementation, as to oust the states from a regulatory role in the marine pollution area. Title I of the PWSA does not require vessel traffic systems and services for all ports, nor does it contemplate that such systems will necessarily include all aspects of navigational safety within a particular port or harbor area. In the case of Puget Sound, although the Coast Guard has established and is operating a rudimentary routing and reporting system, see 39 *Fed.*

[17]In the District Court, ARCO relied on two decisions—*City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973), and *Northern States Power Co. v. The State of Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd mem.*, 405 U.S. 1035 (1972)—for the proposition that a comprehensive federal regulatory scheme must necessarily preclude complementary state regulation. However, both cases are limited to rather special circumstances, radiation standards in *Northern States* and air transportation management in *Burbank*, where there was a history of exclusive federal control and no history of state police power regulation. As such, they have little application to an area such as port and waterway safety, where the state has long been held to have "exceptional scope for the exercise of its regulatory power. * * *" *Southern Pacific Co. v. State of Arizona ex rel. Sullivan*, 325 U.S. 761, 783 (1945).

Reg. 25430 (1974), 33 C.F.R. Part 161, Subpart B (Exhibit T), that system does not involve comprehensive control of tanker movement. For example, while traffic lanes are established to keep vessels separated, this system does not purport to address other problems of tanker movement, such as lack of maneuverability and loss of power — problems addressed by Chapter 125's tug escort and design feature provisions. Moreover, the Coast Guard has neither proposed nor adopted regulations establishing general access limits for Puget Sound. Obviously, all the provisions of Chapter 125 are consistent with the Puget Sound vessel traffic system.[18] Indeed, the federal and state systems have operated in a complementary and successful manner since September of 1975 when the state statute took effect.

It is equally clear that the design and construction standards authorized and adopted under the PWSA are not comprehensive in the sense of precluding state efforts to promote higher standards. The Coast Guard has stated that these regulations "are not a complete and comprehensive answer" to the tanker pollution problem. United States Coast Guard, *Final Environmental Impact Statement on Regulations for Tank Vessels Engaged in the Carriage of Oil in Domestic Trade* at 1 (August 15, 1975) (Exhibit X). Moreover, the Coast Guard, in implementing the

[18]While the Coast Guard has published an Advance Notice of Proposed Rulemaking, 41 *Fed. Reg.* 18770 (May 6, 1976), indicating that it is considering the possibility of proposing general regulations for tug escorts, it has not actually proposed, yet alone adopted, such regulations.

PWSA, has recognized that design features of Chapter 125, *e.g.*, double bottoms and twin screws, may be appropriate in particular local environments, even though it has determined that they should not be mandated on a national basis. *Id.* at 64, 73. Chapter 125 does not mandate design standards as such—a medium sized oil tanker not meeting its standards is free to enter Puget Sound as long as it is accompanied by a tug escort. The act simply expresses a state preference for particular design and equipment features.[19]

If the scheme of the PWSA is not so comprehensive as to preclude state action, neither does it require or contemplate uniform national implementation. The PWSA itself recognizes that operating requirements, such as tug escorts and access limitations, may differ as a function of particular, local navigational hazards, while, as just noted, the need for particular design and construction features may depend upon such factors as the environment and geographic location in which the ship is operating. In light of these local variations, there is no inherent need for exclusive federal control and thus no reason to imply preemption.

To take just one example of the absence of need for exclusive federal control, the Deepwater Port Act of 1974, 33 U.S.C. §§ 1501 *et seq.*, specifically vests

[19]There is no dispute, it should be pointed out, that any tanker between 40,000 DWT and 125,000 DWT which has the design and equipment features embodied in Section 3(2) of Chapter 125 can also fully comply with the rules and regulations promulgated by the Coast Guard under the PWSA.

in states an absolute veto over whether supertankers may serve federally licensed facilities located more than three miles off their shores. 33 U.S.C. § 1503 (c)(9). It is difficult to conclude that Congress could have intended that the State of Washington was empowered to exclude supertankers at offshore ports but not so empowered in inland waters where the dangers of transportation are greater, as are the environmental values to be preserved.

IV. The Ports and Waterways Safety Act Must Be Interpreted Consistently With Overall Federal Policy for Protection of the Marine and Coastal Environment

Finally, while the District Court characterized the PWSA as not "inviting" state participation in its regulatory scheme (App. 9a), the issue in this case is a broader one of how Chapter 125 relates to the overall federal approach to oil pollution control. To be sure, there is "overlap", as the District Court stated (App. 11a), between the purposes of Chapter 125 and the PWSA, but such overlap is emphatically not grounds for upsetting state police power regulation. As this Court stated in *New York State Department of Public Services v. Dublino*, 413 U.S. 405, 419 (1973):

> "* * * It would be incongruous for Congress on the one hand to promote [a given goal] * * * and on the other to prevent states from undertaking supplementary efforts towards this very same end."[20]

Of particular importance to this controversy is the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 *et seq.* Regulation of land and water resources are intimately related. The District Court's holding that the State of Washington has no power to regulate the manner in which crude oil reaches its refineries fundamentally undercuts the State's land and water use planning and regulatory authority over the coastal zone, specifically recognized by Congress in the Coastal Zone Management Act.

[20] Chapter 125 must be set in the context of the overall federal approach to the protection of marine and coastal resources. The fundamental national policy stated in the Federal Water Pollution Control Act Amendments of 1972, is

> "to recognize, preserve and protect the primary responsibilities of the states to prevent, reduce and eliminate pollution. * * *" 33 U.S.C. § 1251(b).

The Estuarine Areas Act of 1968, 16 U.S.C. §§ 1221 *et seq.* provides:

> "* * * it is declared to be the policy of Congress to recognize, preserve and protect the responsibilities of the States in protecting, conserving, and restoring the estuaries of the United States." 16 U.S.C. §1221.

The Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 *et seq.*, which establishes a program of federal grants to coastal states for developing coastal zone management programs, is based in part upon the finding that,

> "The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the land and waters in the coastal zone. * * *" Section 301(b), 16 U.S.C. § 1451(b).

The Deepwater Port Act of 1974, 33 U.S.C. §§ 1501 *et seq.*, which provides for federal licensing of offshore ports for supertankers, declares that its purpose is, *inter alia*, to "protect the interests of the United States and those adjacent coastal states in the location, construction and operation of deepwater ports," 33 U.S.C. §1502(a)(3), and to "protect the rights and responsibilities of states and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law," 33 U.S.C. §1502(a)(4). The PWSA, and its relationship to state law, must be interpreted consistently with this mass of recently enacted federal legislation.

On June 1, 1976, the Secretary of Commerce approved the State of Washington's Coastal Zone Management Program (Exhibit AAA). Chapter 125 is part of the Coastal Zone Management Program in two ways. First, it is specifically mentioned in the Program. Second, and more importantly, it is an essential element of the State's policy, incorporated in the Program, to move the bulk of oil tanker traffic, particularly supertanker traffic, outside the environmentally sensitive waters of Puget Sound.[21]

It is not Appellants' contention that approval of the Coastal Zone Management Program "somehow waives federal preemption in the area" (App. 11a). Appellants recognize that Section 307(e) of the Coastal Zone Management Act, 16 U.S.C. § 1456(e), makes it clear that federal approval of a state program does not override other federal enactments. Nonetheless, those enactments, and the authority of federal agencies thereunder, must be interpreted consistently with the purposes of the Coastal Zone Management Act and its intention that the federal and state regulatory efforts be harmonized to the fullest extent possible. In the instant case, given the absence of a clear expression of congressional intent to preempt, federal approval of the State Program provides

[21] The Program states:

"The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the north Puget Sound and straits oil transportation issues. * * *" (Exhibit AAA).

a further reason to hold that Chapter 125 is in harmony with federal statutory policy.

V. Chapter 125 Does Not Violate the Commerce Clause of the Constitution

ARCO contended below that Chapter 125 impermissibly conflicted with the Commerce Clause. Although the issue was fully briefed and extensively argued orally to the District Court, the Court did not decide that issue because it held Chapter 125 invalid as hereinbefore described.

Chapter 125 is a legitimate exercise of the State's police power. The act is designed to protect a legitimate local interest — an unpolluted Puget Sound. Chapter 125 seeks to protect the public health and welfare, *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960); preserve valuable natural resources, *Cities Service Gas Co. v. Peerless Co.*, 340 U.S. 179 (1950); regulate oversized vessels used in commercial transportation, *South Carolina Highway Department v. Barnwell Bros.*, 303 U.S. 177 (1938); and regulate harbors and docking facilities, *Clyde Mallory Lines, Inc. v. Alabama*, 296 U.S. 261, 267-268 (1935). Additionally, Chapter 125 is valid because it is an evenhanded regulation, is not preempted by federal action, and is not unduly burdensome on interstate commerce. See *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443 (1960).

The burdens imposed by the statute on interstate commerce are minimal, if not wholly speculative.

Moreover, there is no national uniform policy on the subject of harbor and internal water regulations for oil tankers that would displace the historic authority of states and local harbors to establish such regulations for themselves. *Kelly v. Washington*, 302 U.S. 1 (1937); *The James Gray v. The John Fraser*, 62 U.S. (21 How.) 184 (1858).

VI. Chapter 125 Does Not Violate the Treaty Making Clause

ARCO also contended below that Chapter 125 impermissibly interfered with the federal power to make treaties and to regulate foreign affairs; the District Court did not decide the issue. But state regulations, like Chapter 125, of a subject over which the federal government also exercises authority is allowable, even where the regulation may affect foreign affairs. See *DeCanas v. Bica*, 424 U.S. 351 (1976).

Washington's regulatory program does not conflict with any exercised federal treaty or foreign affairs power.

VII. The Eleventh Amendment Precluded District Court Jurisdiction Over State of Washington Defendants

The State of Washington defendants, as they did below, contend that the District Court lacked the jurisdiction to entertain this suit against them, due to the Eleventh Amendment. Although the District Court found the memorandum in support of defendants' position "persuasively argued," the Court re-

jected defendants' motion to dismiss. The State of Washington believes that it is protected by the Eleventh Amendment, and that there are not present here the reasons for the rule announced in *Ex Parte Young*, 209 U.S. 123 (1908), e.g., the State's Uniform Declaratory Judgments Act, Chapter 7.24 RCW, gives to ARCO the same right in state court that it chose to pursue in federal court. The rule of *Ex Parte Young* should be properly defined and applied so as not to deny the state the Amendment's protection. If that cannot be done, then the rule, a fiction controversial as its announcement and productive in later years of strained and inconsistent opinions, should be overruled to the extent that it denies a state the Amendment's protection in a case of this precise nature.

CONCLUSION

Chapter 125 is an integral part of an overall scheme of the State of Washington that contemplates both the protection of the confined waters of Puget Sound and the accommodation of the oil and petroleum industry that exists within the State of Washington. The protection against oil spills the chapter provides is a matter of fundamental importance to the people of the State. This Court has often recognized in recent years that diverse local solutions to pressing and varying social and environmental concerns are vital to a healthy federal system. See generally Note, *The Preemption Doctrine: Shift-*

ing Perspective on Federalism and the Burger Court, 75 Colum. L. Rev. 623 (1975).

To hold as the District Court has done that the State of Washington is without power to protect itself against oil spills before they occur runs counter to the overriding purpose of the PWSA itself to ensure adequate protection of this country's marine and coastal resources. The far-reaching results wrought by the District Court's holding cannot be derived from and are inconsistent with the purpose and intent of the PWSA.

Accordingly, appellants respectfully submit that the federal questions presented herein are substantial and warrant this Court's plenary review.

Respectfully submitted,

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Date: January 4, 1977

APPENDIX A

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

No. C-75-648-M

Order

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULI, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

THIS MATTER came before the undersigned, one of the three judges empanelled to hear and determine

the above-entitled cause, in accordance with Title 28 U.S.C. §§ 2281 and 2284 and in furtherance of the unanimous opinion of the said three judges which has now been filed herein, it is hereby

ORDERED, ADJUDGED and DECREED that Chapter 125, Laws of Washington, 1975, 1st Extra Session, codified at R.C.W. §§ 88.16.170, *et seq.* (The Tanker Law) be and the same is hereby declared null and void and of no force and effect. It is further

ORDERED that the application of the plaintiff for an order enjoining the responsible officials of the State of Washington from enforcing the said statute pending any appeal of this matter be and the same is hereby denied; and it is further

ORDERED that no party to the cause shall recover costs.

DATED this 23rd day of September 1976.

WALTER T. MCGOVERN
Chief United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
No. C-75-648-M

(Three-Judge Court)

Order of Permanent Injunction

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

THIS MATTER came on to be heard before the undersigned Judges of the above-entitled Court on the motion of the plaintiff for a permanent injunction.

The matter having been argued and considered, and the Three-Judge Court having determined and declared that Chapter 125, Laws of Washington, 1975, 1st Extra Session, codified in R.C.W. §§ 88.16-.170, *et seq.* (the Tanker Law) is null and void and of no force and effect; and it appearing that the defendants will attempt to enforce said laws unless otherwise enjoined, and it appearing that plaintiffs are entitled to the relief sought, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendants and their successors in office and all others acting in behalf of them or any of them are hereby permanently enjoined from enforcing or attempting to enforce the aforesaid statute.

This Order is stayed until the 15th day of December 1976.

DATED this 12th day of November 1976.

ALFRED T. GOODWIN
United States Circuit Judge

WILLIAM G. EAST
United States District Judge

WALTER T. McGOVERN
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C-75-648-M

Opinion

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. McEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Before: GOODWIN, Circuit Judge, and MCGOVERN and EAST, District Judges.

PER CURIAM.

Atlantic Richfield Company (Arco) and Seatrain Lines, Inc., sued named officials of the State of Washington to enjoin enforcement of a 1975 Washington law regulating oil tankers operating in the Puget Sound. Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1337, and this three-judge court was convened in accordance with 28 U.S.C. §§ 2281, 2284.[1]

At the outset, the State of Washington challenges our jurisdiction, asserting sovereign immunity under the Eleventh Amendment. Aware of the rule in *Ex Parte Young*, 209 U.S. 123 (1908), the State invites us to "overrule" it, or at least to restrict the scope of cases falling within the *Young* "exception" to the Eleventh Amendment. The invitation is attractively and persuasively argued, but we decline it. The Supreme Court, if it chooses to do so,[2] will have ample opportunity to reconsider *Young*.

The challenged statutes are found in Chapter 125, Laws of Washington, 1975, 1st Extra Sess., codified at R.C.W. §§ 88.16.170, *et seq.* (the Tanker Law). The Tanker Law regulates oil tankers operating in Puget Sound. Section 2 of the Tanker Law

[1]The Three-Judge Court Act was modified by ..... Stat. ..... (1976). Section 7 of that modification specifically denied any retroactive application of the change. Since this case was heard before the change, our jurisdiction is determined by the former law.

[2]See 28 U.S.C. § 1253 (1970).

requires any tanker in excess of 50,000 deadweight tons (dwt) to employ a locally licensed pilot. Section 3(1) absolutely prohibits "supertankers", that is, those larger than 125,000 dwt. And § 3(2) prescribes some minimum design specifications (shaft horsepower, twin screws, double bottoms, and twin radars) for tankers between 40,000 and 125,000 dwt. A proviso in § 3(2) waives these design specifications for tankers accompanied by an apppropriate complement of tugboats.

Arco and Seatrain contend that the state's restrictions are preempted by federal regulation in the field, are violative of the commerce clause, and invade the foreign affairs powers of the United States.

We are persuaded that federal law has preempted the field. Title I of the Ports and Waterways Safety Act of 1972 (the PWSA), 33 U.S.C. §§ 1221 *et seq.*, establishes a comprehensive federal scheme for regulating the operations, traffic routes, pilotage, and safety design specifications of tankers. Under the PWSA, the Coast Guard can create traffic-control systems for Puget Sound,[3] and it has done so. 33 C.F.R. Part 161, Subpart B. The PWSA gives the Coast Guard authority to restrict and even exclude tankers from Puget Sound under adverse or hazardous conditions. 33 U.S.C. § 1221(3)(iv).

Title II of the PWSA amended the Tank Vessel Act of 1936, 46 U.S.C. §§ 391a. It empowered the

[3]By "Puget Sound" we mean those waters east of a line extending from Discovery Island Light south to New Dungeness Light. R.C.W. § 88.16.190.

Coast Guard to regulate design, construction, and maintenance of tankers operating in United States waters. *See* proposed regulations, 41 Fed. Reg. 15859 (April 15, 1976).

The purpose of the original Tank Vessel Act, and of Title II of PWSA, was to establish a uniform set of regulations governing the types of ships permitted within the coastal waters of the United States and the conditions under which they would be permitted to operate. Balkanization of regulatory authority over this most interstate, even international, of transportation systems is foreclosed by the national policy embodied in the PWSA. The PWSA has preempted § 3(2) of Washington's Tanker Law.

Washington asserts that the minimum design specifications required by § 3(2) of the Tanker Law were not preempted, because they can be avoided if the tanker has a tugboat escort. Congress has given the Coast Guard authority to require tugboat escorts in Puget Sound under hazardous conditions. 33 U.S.C. § 1221(3)(iv). And the Coast Guard has considered doing this. Department of Transportation, Coast Guard, Final Environmental Impact Statement [on the] Regulations for Tank Vessels Engaged in the Carriage of Oil in Domestic Trade 71 (August 15, 1975). We believe that the tugboat-escort provision of the Tanker Law has also been preempted by the federal law.

Arco and Seatrain also argue that § 2 of Washington's Tanker Law (requiring a local pilot on all

tankers larger than 50,000 dwt) has been preempted. Insofar as the Tanker Law prohibits a tanker "enrolled in the coastwise trade" from navigating Puget Sound unless it has a local pilot, the statute is void; it conflicts with clear federal law on that subject. 46 U.S.C. §§ 215, 364 (1970).

Recognizing the difficulty of its position, the State of Washington argues that its Tanker Law is part of a comprehensive coastal management plan, and that it should be upheld on that ground. "Cooperative federalism" has been the congressional policy for designing a United States environmental policy. The Congress funded and encouraged the coastal states to design comprehensive and forward-looking coastal management plans. 16 U.S.C. §§ 1451 *et seq.* Congress has invoked "cooperative federalism" —or at least some state involvement—in virtually all of its water-related regulatory programs: The Federal Water Pollution Control Act, 33 U.S.C. §§ 1151 *et seq.*; the Clean Air Act, 42 U.S.C. § 1857; the Estuarine Act of 1968, 16 U.S.C. §§ 1221 *et seq.*; and the Deepwater Ports Act of 1974, 33 U.S.C. §§ 1501 *et seq.*

Congress has used "cooperative federalism" in forming environmental regulations. But the State of Washington fails to note that in those statutes Congress explicitly invited state participation in various phases of the formation of the regulatory scheme. The PWSA, on the other hand, does not invite such

state participation; it does not share regulatory authority over oil tankers with the states.

Supporting its position, Washington cites *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973), and *Huron Portland Cement* v. *City of Detroit*, 362 U.S. 440 (1960). The *Askew* case upheld Florida's law imposing strict liability in tort on oil spillers. The Court held that the state regulatory scheme did not conflict with federal regulation of oil tankers. But that Florida statute did not attempt to regulate the design of the tanker or tanker operations, which were already federally regulated. The *Askew* case involved the Federal Water Quality Control Act, not the PWSA, and the holding of the Court was in part reflective of the congressional policy of "cooperative federalism" in the Federal Water Quality Control Act.

In the *Huron Portland Cement* case, a city's smoke-control ordinance was applied against a vessel engaged in interstate commerce. The Court observed that the environmental purpose of Detroit's ordinance was not preempted by federal safety inspection regulations. There was "no overlap between the scope of the federal ship inspection laws and that of the municipal ordinance." 362 U.S. at 446. Since the PWSA introduced environmental considerations into the federal tanker regulations,[4] the State of Wash-

[4]One of the primary reasons for the passage of the Ports and Waterways Safety Act was concern over the environment. The introductory clause of Title I states that the purpose is "to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage." 33 U.S.C. § 1221.

ington cannot say that there is "no overlap" between the state and federal laws.

Finally, the State of Washington asserts that the Commerce Department's approval of its coastal management plan (to which the Tanker Law is related) somehow waives federal preemption of the area. The Secretary of Commerce can approve a state's coastal management plan (thereby making it eligible for federal funding) only if "the views of Federal agencies principally affected by such program have been adequately considered." 16 U.S.C. § 1456(b) (1970). The Secretary may or may not have "considered" the views of the Coast Guard. The Secretary may or may not have noticed the preemptive effect of the PWSA on Washington's Tanker Law. That is not before us. We cannot read the Secretary's approval of a coastal management plan, to which the Tanker Law is only collaterally related, as foreclosing our inquiry into the federal preemption of oil tanker regulation.

Finally, the state and the other states filing amici briefs have argued with some conviction that a state's officials, responsible to its voters, are better able to protect the state's shoreline environment than is the Commandant of the Coast Guard, headquartered on the other side of the continent. This argument presents legislative, rather than judicial, policy considerations.

Because the Washington Tanker Law conflicts with federal law preempting the same subject matter,

the state law is void. The plaintiffs have asserted a number of other grounds for declaring the statute void. It is unnecessary to reach these other points.

It is likewise unnecessary to grant an injunction. It is presumed that the responsible officials of the State of Washington will not undertake to enforce the statute pending such further appeals as may be taken. The clerk will enter judgment.

Neither party shall have costs.

ALFRED T. GOODWIN
United States Circuit Judge

WALTER T. McGOVERN
United States District Judge

WILLIAM G. EAST
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C-75-648-M

Judgment, 3-Judge Court

ATLANTIC RICHFIELD Co., et al,
Plaintiffs,

vs.

DANIEL J. EVANS, Governor of the State of Washington, et al,
Defendants.

This matter having come on for consideration before the 3-Judge Court composed of the Honorable Judges Alfred T. Goodwin, United States Circuit Judge, Walter T. McGovern, United States District Judge, William G. East, United States District Judge, presiding, and the issues having been duly considered and an opinion and order having been duly rendered that Chapter 125, Laws of Washington, 1975, 1st Extra Session, codified at R.C.W. §§ 88.16.170, *et seq.* (The Tanker Law) be and the same is hereby declared null and void and of no force and effect and that application of plaintiff for an order enjoining the responsible officials of the State of Washington from enforcing said statute pending any appeal of this matter is denied.

IT IS HEREBY ORDERED AND ADJUDGED, that judgment is hereby entered in favor of Plaintiffs against Defendants, with no costs.

DATED this 24th day of September, 1976.

JOHN A. McLELLAN
Deputy Clerk, U.S. District Court

APPENDIX E(1)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

Civil No. C-75-648-M

(Three Judge Court)

Notice of Appeal to the Supreme Court of the United States

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

and

SEATRAIN LINES, INCORPORATED,

Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,

Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,

Intervening Defendants.

Notice is hereby given that Daniel J. Evans, Governor of the State of Washington; Slade Gorton, Attorney General of the State of Washington; William C. Jacobs, Chairman, and Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull, Members, Board of Pilotage Commissioners; and David S. McEachran, Whatcom County Prosecuting Attorney, defendants above named, hereby appeal to the Supreme Court of the United States from the "Judgment" in this cause dated and entered September 24, 1976 and the "Order" in this cause dated September 23, 1976 and entered September 24, 1976, declaring Chapter 125, Laws of Washington, 1975, 1st Extraordinary Session, codified as RCW 88.16.170, *et seq.*, null and void and of no effect, and from the "Order of Permanent Injunction" in this cause dated and entered November 12, 1976, enjoining the defendants from enforcing or attempting to enforce the aforesaid statute.

This appeal is taken pursuant to 28 U.S.C. § 1253 and 28 U.S.C. § 2101.

DATED: November 19, 1976

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Senior Assistant Attorney General
Of Attorneys for Defendants Daniel J. Evans, Slade Gorton, William C. Jacobs, Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull

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APPENDIX E(2)

Civil No. C-75-648-M

(Three Judge Court)

Notice of Appeal to the Supreme Court of the United States

AT SEATTLE

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General

of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Notice is hereby given that Coalition Against Oil Pollution, National Wildlife Federation, Sierra Club, and Environmental Defense Fund, Inc., intervening defendants, hereby appeal to the Supreme Court of the United States from the "Judgment" in this cause dated and entered September 24, 1976 and the "Order" in this cause dated September 23, 1976 and entered September 24, 1976, declaring Chapter 125, Laws of Washington, 1975, 1st Extraordinary Session, codified as RCW 88.16.170, *et seq.*, null and void and of no effect, and from the "Order of Permanent Injunction" in this cause dated and entered November 12, 1976, enjoining the defendants from enforcing or attempting to enforce the aforesaid statute.

This appeal is taken pursuant to 28 U.S.C. § 1253 and 28 U.S.C. § 2101.

DATED: November 19, 1976.

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APPENDIX E(3)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Notice of Appeal to the Supreme Court of the United States

Civil No. C-75-648-M

(Three Judge Court)

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER

T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Notice is hereby given that Christopher T. Bayley, King County Prosecuting Attorney, intervening defendant, hereby appeals to the Supreme Court of the United States from the "Judgment" in this cause dated and entered September 24, 1976 and the "Order" in this cause dated September 23, 1976 and entered September 24, 1976, declaring Chapter 125, Laws of Washington, 1975, 1st Extraordinary Session, codified as RCW 88.16.170, *et seq.*, null and void and of no effect, and from the "Order of Permanent Injunction" in this cause dated and entered November 12, 1976, enjoining the defendants from enforcing or attempting to enforce the aforesaid statute.

This appeal is taken pursuant to 28 U.S.C. § 1253 and 28 U.S.C. § 2101.

DATED: November 19, 1976.

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APPENDIX F(1)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil No. C-75-648-M

(Three Judge Court)

Notice of Appeal

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Notice is hereby given that Daniel J. Evans, Governor of the State of Washington; Slade Gorton, Attorney General of the State of Washington; William C. Jacobs, Chairman, and Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull, Members, Board of Pilotage Commissioners; and David S. McEachran, Whatcom County Prosecuting Attorney, defendants above named, and Coalition Against Oil Pollution, National Wildlife Federation, Sierra Club, Environmental Defense Fund, Inc., and Christopher T. Bayley, King County Prosecuting Attorney, Intervening defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that portion of the Order declaring void and of no effect Chapter 125, Laws of Washington, 1975, 1st Extraordinary Session, codified as RCW 88.16.170, *et seq.*, dated September 23, 1976, and that portion of the Judgment of this Court entered on September 24, 1976, to the same effect.

This Notice of Appeal relates to an Order and Judgment of a three-judge court and is filed as a precaution to insure the defendants' and intervening defendants' right to appeal the aforementioned Order and Judgment. Several motions and requests, including (1) a motion for a permanent injunction by plaintiff and (2) should that motion be granted, a motion by defendants and intervening defendants to stay the effectiveness of a permanent injunction pending completion of appeals initiated by defend-

ants and intervening defendants, are presently before the Court for consideration. Pursuit of the appeal, initiated by this Notice, appears to depend on the rulings taken on the aforementioned motions.

DATED: October 21, 1976

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APPENDIX F(2)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil No. C-75-648-M

(Three Judge Court)

Notice of Appeal to the United States Court of Appeals for the Ninth Circuit

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Notice is hereby given that Daniel J. Evans, Governor of the State of Washington; Slade Gorton, Attorney General of the State of Washington; William C. Jacobs, Chairman, and Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull, Members, Board of Pilotage Commissioners; and David S. McEachran, Whatcom County Prosecuting Attorney, defendants above named; and Coalition Against Oil Pollution, National Wildlife Federation, Sierra Club, Environmental Defense Fund, Inc. and Christopher T. Bayley, King County Prosecuting Attorney, Intervening defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the "Order of Permanent Injunction" in this action dated Novem-

ber 12, 1976, enjoining the defendants from enforcing or attempting to enforce Chapter 125, Laws of Washington, 1975, 1st Extraordinary Session, codified as RCW 88.16.170, *et seq.*

DATED: November 19, 1976.

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APPENDIX G

ARTICLE VI, CLAUSE 2
(SUPREMACY CLAUSE)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX H

ARTICLE I, SECTION 8, CLAUSE 3
(COMMERCE CLAUSE)

Section 8. The Congress shall have Power
* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *

APPENDIX I

Chapter 88.16 Revised Code of Washington
(Chapter 125)

88.16.170 Oil tankers—Intent and purpose. Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

The legislature further recognizes that certain areas of Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ

Washington state licensed pilots and, if lacking certain safety and maneuvering capability requirements, to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters. [1975 1st ex.s. c 125 § 1.]

Severability—1975 1st ex.s. c 125: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 125 § 6.]

Study authorized and directed: "The House and Senate Transportation and the Utilities Committees are authorized and directed to study the feasibility, benefits, and disadvantages of requiring similar pilot and tug assistance for vessels carrying other potentially hazardous materials and to submit their findings and recommendations prior to the 45th session of the Washington legislature in January, 1977. Such study shall also include a report on the feasibility, benefits and disadvantages of requiring vessels under tug escort to observe a speed limit, and such study shall include a discussion of the impact of a speed limit on the maneuverability of the vessel, the effectiveness of the tug escort and other legal and technical considerations material and relevant to the required study. Such study shall also include an evaluation and recommendations as to whether there should be a transfer of all duties and responsibilities of the board of pilotage commissioners to the Washington utilities and transportation commission or other state agency, and alternate methods for establishing fair and equitable rates for tug escort and pilot transfer." [1975 1st ex.s. c 125 § 5.]

Discharge of oil into state waters: Rcw 90.48.315-90.48.365.

88.16.180 Oil tankers — State licensed pilot required. Notwithstanding the provisions of RCW 88.16.070, any oil tanker, whether enrolled or registered, of fifty thousand deadweight tons or greater, shall be required to take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for any pay pilotage rates pursuant to RCW 88.16.030 as now or hereafter amended. [1975 1st ex.s. c 125 § 2.]

Severability — 1975 1st ex.s. c 125: See note following RCW 88.16.170.

88.16.190 Oil tankers—Restricted waters—Standard safety features required —Exemptions. (1) Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.

(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:

(a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons; and

(b) Twin screws; and

(c) Double bottoms, underneath all oil and liquid cargo compartments; and

(d) Two radars in working order and operating, one of which must be collision avoidance radar; and

(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

Provided, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of

this section shall not apply: *Provided further*, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.04 RCW: *Provided further*, That a tanker of less than forty thousand deadweight tons is not subject to the provisions of RCW 88.16.170 through 88.16.190. [1975 1st ex.s. c 125 § 3.]

APPENDIX J

PORTS AND WATERWAYS SAFETY ACT OF 1972

PUBLIC LAW 92-340; 86 STAT. 424

[H. R. 8110]

An Act to promote the safety of ports, harbors, waterfront areas, and navigable waters of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Ports and Waterways Safety Act of 1972".

TITLE I—PORTS AND WATERWAYS SAFETY AND ENVIRONMENTAL QUALITY

Sec. 101. In order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harms resulting from vessel or structure damage, destruction, or loss, the Secretary of the department in which the Coast Guard is operating may—

(1) establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic;

(2) require vessels which operate in an

area of a vessel traffic service or system to utilize or comply with that service or system, including the carrying or installation of electronic or other devices necessary for the use of the service or system;

(3) control vessel traffic in areas which he determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(i) specifying times of entry, movement, or departure to, from, within, or through ports, harbors, or other waters;

(ii) establishing vessel traffic routing schemes;

(iii) establishing vessel size and speed limitations and vessel operating conditions; and

(iv) restricting vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics and capabilities which he considers necessary for safe operation under the circumstances;

(4) direct the anchoring, mooring, or movement of a vessel when necessary to prevent damage to or by that vessel or her cargo, stores, supplies, or fuel;

(5) require pilots on self-propelled vessels engaged in the foreign trades in areas and under

circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved;

(6) establish procedures, measures, and standards for the handling, loading, discharge, storage, stowage, and movement, including the emergency removal, control and disposition, of explosives or other dangerous articles or substances (including the substances described in section 4417a(2) (A), (B), and (C) of the Revised Statutes of the United States (46 U.S.C. 391a(2) (A), (B), and (C)) on structures subject to this title;

(7) prescribe minimum safety equipment requirements for structures subject to this title to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

(8) establish water or waterfront safety zones or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

(9) establish procedures for examination to assure compliance with the minimum safety equipment requirements for structures.

Sec. 102. (a) For the purpose of this Act, the term "United States" includes the fifty States, the

District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Nothing contained in this title supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this title.

(c) In the exercise of his authority under this title, the Secretary shall consult with other Federal agencies, as appropriate, in order to give due consideration to their statutory and other responsibilities, and to assure consistency of regulations applicable to vessels, structures, and areas covered by this title. The Secretary may also consider, utilize, and incorporate regulations or similar directory materials issued by port or other State and local authorities.

(d) This title shall not be applicable to the Panama Canal. The authority granted to the Secretary under section 101 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this title shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent that the Secretary determines such delegation is necessary for the proper operation of the Seaway.

(e) In carrying out his duties and responsibilities under this title to promote the safe and efficient conduct of maritime commerce the Secretary shall consider fully the wide variety of interests which may be affected by the exercise of his authority hereunder. In determining the need for, and the substance of, any rule or regulation or the exercise of other authority hereunder the Secretary shall, among other things, consider—

(1) the scope and degree of the hazards;

(2) vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) environmental factors;

(5) economic impact and effects;

(6) existing vessel traffic control systems, services, and schemes; and

(7) local practices and customs, including voluntary arrangements and agreements within the maritime community.

Sec. 103. The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this title, or which affects or may affect the safety or en-

vironmental quality of the ports, harbors, or navigable waters of the United States. In any investigation under this title, the Secretary may issue a subpena to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

Sec. 104. The Secretary may issue reasonable rules, regulations, and standards necessary to implement this title. In the exercise of his rulemaking authority the Secretary is subject to the provisions of chapters 5 and 7 of title 5, United States Code. In preparing proposed rules, regulations, and standards, the Secretary shall provide an adequate opportunity for consultation and comment to State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties.

Sec. 105. The Secretary shall, within one year after the effective date of this Act, report to the Congress his recommendations for legislation which may be necessary to achieve coordination and/or eliminate duplication between the functions authorized by this Act and the functions of any other agencies.

Sec. 106. Whoever violates a regulation issued under this title shall be liable to a civil penalty of not more than $10,000. The Secretary may assess and collect any civil penalty incurred under this title and, in his discretion, remit, mitigate, or compromise any penalty. Upon failure to collect or compromise a penalty, the Secretary may request the Attorney General to commence an action for collection in any district court of the United States. A vessel used or employed in a violation of a regulation under this title shall be liable in rem and may be proceeded against in any district court of the United States having jurisdiction.

Sec. 107. Whoever willfully violates a regulation issued under this title shall be fined not less than $5,000 or more than $50,000 or imprisoned for not more than five years, or both.

TITLE II—VESSELS CARRYING CERTAIN CARGOES IN BULK

Sec. 201. Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a)[5] is hereby amended to read as follows:

"Sec. 4417a. (1) Statement of Policy.—The Congress hereby finds and declares—

"That the carriage by vessels of certain cargoes in bulk creates substantial hazards to life, property, the navigable waters of the

5. 46 U.S.C.A. § 391a.

United States (including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values, which waters and resources are hereafter in this section referred to as the 'marine environment'.

"That existing standards for the design, construction, alteration, repair, maintenance and operation of such vessels must be improved for the adequate protection of the marine environment.

"That it is necessary that there be established for all such vessels documented under the laws of the United States or entering the navigable waters of the United States comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitigate the hazards to life, property, and the marine environment.

"(2) Vessels Included.—All vessels, regardless of tonnage size, or manner of propulsion, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, which are documented under the laws of the United States or enter the navigable waters of the United States, except public vessels other than those engaged in commercial service, that shall have on board liquid cargo in bulk which is—

"(A) inflammable or combustible, or

"(B) oil, of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, or

"(C) designated as a hazardous polluting substance under section 12(a) of the Federal Water Pollution Control Act (33 U.S.C. 1162);

shall be considered steam vessels for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof: *Provided*, That this section shall not apply to vessels having on board the substances set forth in (A), (B), or (C) above only for use as fuel or stores or to vessels carrying such cargo only in drums, barrels, or other packages: *And, provided further*, That nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 90-397 with respect to certain vessels of not more than five hundred gross tons: *And provided further*, That this section shall not apply to vessels of not more than five hundred gross tons documented in the service of oil exploitation which are not tank vessels and which would be subject to this section only because of the transfer of fuel from the vessels' own fuel supply tanks to offshore drilling or production facilities.

"(3) Rules and Regulations.—In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast

Guard is operating (hereafter referred to in this section as the 'Secretary') shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, but not limited to, the superstructures, hulls, places for stowing and carrying such cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such cargo, the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life saving, fire protection, and the prevention and mitigation of damage to the marine environment; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crew thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Secretary may, after hearing as provided in subsection (4), adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations the Secretary shall give due consideration to the kinds and grades of such

cargo permitted to be on board such vessel. In establishing such rules and regulations the Secretary shall, after consultation with the Secretary of Commerce and the Administrator of the Environmental Protection Agency, identify those established for protection of the marine environment and those established for vessel safety.

"(4) Adoption of Rules and Regulations.—Before any rules or regulations, or any alteration, amendment, or repeal thereof, are approved by the Secretary under the provisions of this section, except in an emergency, the Secretary shall (A) consult with other appropriate Federal departments and agencies, and particularly with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, with regard to all rules and regulations for the protection of the marine environment, (B) publish proposed rules and regulations, and (C) permit interested persons an opportunity for hearing. In prescribing rules or regulations, the Secretary shall consider, among other things, (i) the need for such rules or regulations, (ii) the extent to which such rules or regulations will contribute to safety or protection of the marine environment, and (iii) the practicability of compliance therewith, including cost and technical feasibility.

"(5) Rules and Regulations for Safety; Inspection; Permits; Foreign Vessels.—No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations for vessel safety

established hereunder, have on board such cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes of the United States and until a permit has been endorsed on such certificate of inspection by the Secretary, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder, and showing the kinds and grades of such cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Secretary on such certificate of inspection until such vessel has been inspected by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder. For the purpose of such inspection, approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A certificate issued under the provisions of this section shall be valid for a period of time not to exceed the duration of the certificate of inspection on which such permit is endorsed, and shall be subject to revocation by the Secretary whenever he shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided*, That rules

and regulations for vessel safety established hereunder and the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further*, That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 4472 of this title.

"(6) Rules and Regulations for Protection of the Marine Environment; Inspection; Certification.—No vessel subject to the provisions of this section shall, after the effective date of rules and regulations for protection of the marine environment, have on board such cargo, until a certificate of compliance, or an endorsement on the certificate of inspection for domestic vessels, has been issued by the Secretary indicating that such vessel is in compliance with such rules and regulations. Such certificate of compliance or endorsement shall not be issued by the Secretary until such vessel has been inspected by the Secretary and found to be in compliance with the rules and regulations for protection of the marine environment established hereunder. A certificate of compliance or an endorsement issued under this subsection shall be valid for a period specified therein by the Secretary and shall be subject to revocation whenever the Secretary finds that the vessel concerned does not comply with the conditions upon which such certificate or endorsement was issued.

"(7) Rules and Regulations for Protection of the Marine Environment Relating to Vessel Design and Construction, Alteration and Repair; International Agreement.—(A) The Secretary shall begin publication as soon as practicable of, proposed rules and regulations setting forth minimum standards of design, construction, alteration, and repair of the vessels to which this section applies for the purpose of protecting the marine environment. Such rules and regulations shall, to the extent possible, include but not be limited to standards to improve vessel maneuvering and stopping ability and otherwise reduce the possibility of collision, grounding, or other accident, to reduce cargo loss following collision, grounding, or other accident, and to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting, cargo handling, and other activities.

"(B) The Secretary shall cause proposed rules and regulations published by him pursuant to subsection (7) (A) to be transmitted to appropriate international forums for consideration as international standards.

"(C) Rules and regulations published pursuant to subsection (7) (A) shall be effective not earlier than January 1, 1974, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In the ab-

sence of the promulgation of such rules and regulations consonant with international treaty, convention, or agreement, the Secretary shall establish an effective date not later than January 1, 1976, for rules and regulations previously published pursuant to this subsection (7) which he then deems appropriate.

"(D) Any rule or regulation for protection of the marine environment promulgated pursuant to this subsection (7) shall be equally applicable to foreign vessels and United States-flag vessels operating in the foreign trade. If a treaty, convention, or agreement provides for reciprocity of recognition of certificates or other documents to be issued to vessels by countries party thereto, which evidence compliance with rules and regulations issued pursuant to such treaty, convention, or agreement, the Secretary, in his discretion, may accept such certificates or documents as evidence of compliance with such rules and regulations in lieu of the certificate of compliance otherwise required by subsection (6) of this section.

"(8) Shipping Documents.—Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Secretary indicating the kinds, grades, and approximate quantities of such cargo on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

"(9) Officers; Tankermen; Certification.—(A) In all cases where the certificate of inspection does

not require at least two licensed officers, the Secretary shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certified as tankermen.

"(B) The Secretary shall issue to applicants certificates as tankermen, stating the kinds of cargo the holder of such certificate is, in the judgment of the Secretary, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Secretary, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such cargo on board, and that the applicant fulfills the qualifications of tankerman as prescribed by the Secretary under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 4450 of this title.

"(10) Effective Date of Rules and Regulations.—Except as otherwise provided herein, the rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Secretary shall for good cause fix a different time. If the Secretary shall fix an effective date later than ninety days after such promulgation, his determination to fix such a later date shall be accompanied by an explanation of such determination

which he shall publish and transmit to the Congress.

"(11) Penalties.—(A) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section, or the rules and regulations established hereunder, shall be liable to a civil penalty of not more than $10,000.

"(B) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall knowingly and willfully violate the provisions of this section or the rules and regulations established hereunder, shall be subject to a fine of not less than $5,000 or more than $50,000, or imprisonment for not more than five years, or both.

"(C) Any vessel subject to the provisions of this section, which shall be in violation of this section or the rules and regulations established hereunder, shall be liable in rem and may be proceeded against in the United States district court for any district in which the vessel may be found.

"(12) Injunctive Proceedings. — The United States district courts shall have jurisdiction for cause shown to restrain violations of this section or the rules and regulations promulgated hereunder.

"(13) Denial of Entry.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States to any vessel not in compliance with the provisions of this section or the regulations promulgated thereunder."

Sec. 202. Regulations previously issued under statutory provisions repealed, modified, or amended by this title shall continue in effect as though promulgated under the authority of section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a), as amended by this title, until expressly abrogated, modified, or amended by the Secretary of the Department in which the Coast Guard is operating under the regulatory authority of such section 4417a as so amended. Any proceeding under such section 4417a for a violation which occurred before the effective date of this title may be initiated or continued to conclusion as though such section 4417a had not been amended hereby.

Sec. 203. The Secretary of the Department in which the Coast Guard is operating shall, for a period of ten years following the enactment of this title, make a report to the Congress at the beginning of each regular session, regarding his activities under this title. Such report shall include but not be limited to (A) a description of the rules and regulations prescribed by the Secretary (i) to improve vessel maneuvering and stopping ability and otherwise reduce the risks of collisions, groundings, and other accidents, (ii) to reduce cargo loss in the event of collisions, groundings, and other accidents, and (iii) to reduce damage to the marine environment from the normal operation of the vessels to which this title applies, (B) the progress made with respect to the adoption of international standards for the design, construction, alteration, and repair of vessels to

which this title applies for protection of the marine environment, and (C) to the extent that the Secretary finds standards with respect to the design, construction, alteration, and repair of vessels for the purposes set forth in (A) (i), (ii), or (iii) above not possible, an explanation of the reasons therefor.

Approved July 10, 1972.

APPENDIX K

ARTICLE II, SECTION 2, CLAUSE 2
(TREATY MAKING POWER)

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;

* * *

APPENDIX L

AMENDMENT XI (SUITS AGAINST STATES)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

APPENDIX M

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil No. C-75-648-M

(Three Judge Court)

Order Suspending Processing of Appeals to the United States Court of Appeals for the Ninth Circuit

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER

T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Good cause appearing therefor by the motion of the State of Washington defendants, Daniel J. Evans, et al.,

IT IS HEREBY ORDERED that all further processing of the appeals to the United States Court of Appeals for the Ninth Circuit, initiated by two documents entitled "Notice of Appeal" filed with this Court by defendants and intervening defendants on October 21, 1976, and the other entitled "Notice of Appeal to the United States Court of Appeals for the Ninth Circuit" filed with this Court on November 23, 1976, and related to the Judgment and Orders dated and entered by this Court on September 23 and 24, 1976, and November 12, 1976, is suspended pending completion of an appeal to the United States Supreme Court initiated by defendants through the filing of a "Notice of Appeal to the Supreme Court of the United States" with this Court on November 19, 1976.

DATED this 1st day of December, 1976.

WALTER T. MCGOVERN
United States District Judge

APPENDIX N

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
Civil No. C-75-648-M
(Three Judge Court)

Motion for Order Suspending Processing of Appeals to the United States Court of Appeals for the Ninth Circuit

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

and

SEATRAIN LINES, INCORPORATED,
Intervening Plaintiff,

vs.

DANIEL J. EVANS, Governor of the State of Washington; SLADE GORTON, Attorney General of the State of Washington; WILLIAM C. JACOBS, Chairman, and HARRY A. GREENWOOD, BENJAMIN W. JOYCE, PHILIP H. LUTHER, and J. Q. PAULL, Members, Board of Pilotage Commissioners; and DAVID S. MCEACHRAN, Whatcom County Prosecuting Attorney,
Defendants,

and

COALITION AGAINST OIL POLLUTION, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, INC., and CHRISTOPHER

T. BAYLEY, King County Prosecuting Attorney,
Intervening Defendants.

Defendants Daniel J. Evans, Governor of the State of Washington; Slade Gorton, Attorney General of the State of Washington; William C. Jacobs, Chairman, and Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull, Members, Board of Pilotage Commissioners, move this Court for an order suspending the further processing of the appeals to the United States Court of Appeals for the Ninth Circuit, initiated by two documents, one entitled "Notice of Appeal" and filed with this Court by defendants and intervening defendants on October 21, 1976, and the other entitled "Notice of Appeal to the United States Court of Appeals for the Ninth Circuit" filed with this Court on November 19, 1976, and relating to the Judgment and Orders dated and entered by this Court on September 23 and 24, 1976 and November 12, 1976, pending completion of an appeal to the United States Supreme Court initiated by defendants through the filing of a "Notice of Appeal to the Supreme Court of the United States" with this Court on November 19, 1976.

In support of the granting of the motion, the following is set forth:

1. The aforementioned appeals to the United States Court of Appeals for the Ninth Circuit were filed by defendants as a precaution, arising from the ambiguity of statutes and case law involving appeals from three-judge courts, to insure that the defend-

ants did not forego their opportunity to obtain review of the aforementioned Judgment and Orders of this Court dated and entered on September 23 and 24, 1976 and November 12, 1976.

2. The defendants believe the Court having appellate jurisdiction, in the present posture of the final Judgment and Orders in this case, is the United States Supreme Court. A Notice of Appeal to the United States Supreme Court was filed on November 19, 1976.

3. The movant has contacted attorneys of record for each of the parties to this case, and none of these attorneys has an objection to the granting of the motion.

DATED this 23rd day of November, 1976.

CHARLES B. ROE, JR.
Senior Assistant Attorney General

Of Attorneys for Defendants Daniel J. Evans, Slade Gorton, William C. Jacobs, Harry A. Greenwood, Benjamin W. Joyce, Philip H. Luther, and J. Q. Paull